

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 350

November 3, 1999, 4:07 p.m.
Page S-13763 Temp. Record

OMNIBUS TRADE BILL/Private Anti-Dumping Lawsuits

SUBJECT: African Growth and Opportunity Act . . . H.R. 434. Roth motion to table the Specter modified amendment No. 2347 to the Roth/Moynihan substitute amendment No. 2325.

ACTION: MOTION TO TABLE AGREED TO, 54-42

SYNOPSIS: As introduced, H.R. 434, the African Growth and Opportunity Act, will expand trade with the 48 Sub-Saharan African (SSA) nations by making qualifying SSA nations eligible for enhanced benefits under the Generalized System of Preferences (GSP) program, by giving qualifying SSA nations duty-free and quota-free access to the United States for certain apparel products, by creating a Trade and Economic Cooperation Forum between the United States and SSA countries, and by directing the President to begin plans for implementing a United States-SSA free trade area.

The Roth/Moynihan substitute amendment would enact the Trade and Development Act. The substitute: would include provisions similar to the House provisions to expand trade with SSA countries; would reauthorize the expired GSP program, which grants the President the authority to provide duty-free treatment to imports of eligible articles from designated countries; would reauthorize the expired Trade Adjustment Assistance (TAA) programs, which provide assistance to workers adversely affected by import competition; and would enact the United States-Caribbean Basin Trade Enhancement Act, which would expand the Caribbean Basin Initiative (CBI) by providing additional tariff preferences on a number of products not previously covered.

The Specter modified amendment would create a private right of action for injury from the importation of "dumped" merchandise (merchandise that is sold at a price that is less than the foreign market value or constructed value) or subsidized merchandise. It would be illegal to import or sell dumped or subsidized merchandise in the United States if such actions caused or threatened to cause material injury to industry or labor in the United States or prevented, in whole or in part, the establishment or modernization of any industry in the United States. Cases would be brought in the United States District Court for the District of Columbia Circuit. A suit could be brought against a manufacturer, producer, exporter, or importer (if the importer was related to the manufacturer or exporter). If the plaintiff prevailed, the Customs Service would be required to impose anti-dumping duties. The standard of proof would be a preponderance of the evidence. The burden of proof would be on the plaintiff, except that it would shift

(See other side)

YEAS (54)			NAYS (42)		NOT VOTING (3)	
Republicans (34 or 64%)	Democrats (20 or 47%)		Republicans (19 or 36%)	Democrats (23 or 53%)	Republicans (1)	Democrats (2)
Abraham	Hagel	Bingaman	Bunning	Akaka	McCain ⁻²	Inouye ⁻²
Allard	Hutchinson	Boxer	Burns	Baucus		Kennedy ⁻²
Ashcroft	Kyl	Breaux	Campbell	Bayh		
Bennett	Lott	Bryan	Collins	Biden		
Bond	Lugar	Daschle	Craig	Byrd		
Brownback	Mack	Dodd	Crapo	Cleland		
Cochran	McConnell	Feinstein	DeWine	Conrad		
Coverdell	Murkowski	Graham	Hatch	Dorgan		
Domenici	Nickles	Harkin	Helms	Durbin		
Enzi	Roberts	Kerrey	Hutchison	Edwards		
Fitzgerald	Roth	Kerry	Inhofe	Feingold		
Frist	Smith, Gordon	Landrieu	Jeffords	Hollings		
Gorton	Stevens	Lautenberg	Santorum	Johnson		
Gramm	Thomas	Lieberman	Sessions	Kohl		
Grams	Thompson	Lincoln	Shelby	Leahy		
Grassley	Voinovich	Moynihan	Smith, Bob	Levin		
Gregg	Warner	Murray	Snowe	Mikulski		
		Reid	Specter	Reed		
		Schumer	Thurmond	Robb		
		Wyden		Rockefeller		
				Sarbanes		
				Torricelli		
				Wellstone		

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

to the defendant upon a prima facie showing of a violation or upon a final determination by the International Trade Commission of a violation relating to the import of the article in question. In general, a 4-year statute of limitations would apply to the bringing of such suits. The court could enjoin further imports, sales, and distribution within the United States of a product for failure of a defendant to comply with a court order, including a discovery order. The amendment would also create a similar private right of action to address customs fraud.

Debate was limited by unanimous consent. After debate, Senator Roth moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

Our colleagues have offered this amendment out of a belief that the current process for stopping dumping does not work and out of a belief that creating a new, private civil cause of action will work. We disagree with both premises. The main industry with which our colleagues are concerned is the steel industry. That industry has shrunk drastically over the past couple of decades, largely due to competition from imports and to the fact that those imports were more competitive because they were made with more modern manufacturing methods. The American industry has now retooled, becoming more efficient (and also needing fewer workers, which explains a large part of the drop in employment in this industry). It is true, though, that American steel manufacturers have often had problems from illegal dumping, as have had many other industries. It is also true that it has had remedies, which it has used, to gain protection from that dumping. For instance, after the Asian financial crisis produced a glut of steel on the world market and extensive dumping in the United States, steel companies filed a series of petitions with the Commerce Department. As a result, imports dropped and prices began to rise. Further, the Commerce Department then successfully negotiated numerous suspension agreements with the countries that were guilty of selling steel below cost on the United States market. The Commerce Department is able to get results because everyone knows its track record. In more than 90 percent of the cases that are filed under the antidumping and countervailing duty laws it grants relief, and, due to the deference that the Court of International Trade is required to show to Commerce Department decisions, its decisions are upheld in more than 90 percent of the cases. As both foreign exporters and domestic importers of steel have told us, the result is that once a case is filed against them they immediately stop exporting and importing the targeted steel because they know that, statistically, the odds are against them winning the case. The Chief Executive Office of Bethlehem Steel has acknowledged that his company now files cases as a normal business practice, because even if it eventually loses those cases it will have "won some interim relief." In short, the current system works.

Our colleagues believe that a private right of action would get better results for plaintiffs and would get those results more quickly. We doubt it. A Federal court would not start with the initial deference for the Commerce Department's decisions, as required under current law, and a Federal court review would be more intrusive and time consuming than an administrative review. We do not see how requiring more elaborate discovery and other procedures under a private judicial process would be quicker than the current process (especially when we look at how slowly similar economic litigation that is handled in Federal courts is resolved). Also, we do not see how taking away the deference for Commerce Department decisions, which almost always are in favor of plaintiffs, would increase the likelihood of the plaintiffs prevailing.

If we had truly free markets around the world, without tariffs or national subsidies of industries, this amendment would have merit. However, markets are distorted by governments, and remedies for the worst of those distortions require actions by the governments of the countries that are disadvantaged. We have not reached a time that private rights of action will be able to provide sufficient remedies. We have, though, created a system that has been effective in providing protection from illegal dumping of imports on the U.S. market. The Specter amendment would replace this working system with an untried system of dubious merit at best. We urge our colleagues to table this amendment.

Those opposing the motion to table contended:

The senior Senator from Pennsylvania has been trying since 1983 to enact a private right of action for domestic industries that are victimized by dumping and subsidized imports. Those efforts have failed, and at the same time key industries have been decimated. Steel has been hit particularly hard. Two decades ago, 500,000 people were employed in that industry; now only 160,000 are, and the number is declining rapidly. There are two problems with the existing antidumping remedies. First, they take too long to secure. It frequently takes a year or more to get a case through the Commerce Department and the Court of International Trade, during which time thousands or tens of thousands of jobs in the affected industry may be lost. The Specter amendment would instantly get rid of that problem, because courts would be able to issue temporary restraining orders within 5 days on affidavits and could impose preliminary injunctions within a few weeks. It is simply not true that Federal courts are unable to act quickly on complex economic cases. The second problem with the existing antidumping remedies is that their effectiveness depends on the willingness of the Administration to enforce them. Often, for foreign policy and defense reasons, it chooses not to. The Specter amendment would solve this problem by taking the decision out of the hands of the Administration. American jobs would no longer be sacrificed to try to increase stability in foreign countries. A court would decide, and justice would be served. We urge our colleagues to join us in supporting justice for American companies and workers by voting in favor of the Specter amendment.